

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BREATHITT COUNTY WATER)
DISTRICT FOR AUTHORITY TO ENTER INTO A) CASE NO. 2011-00399
LOAN AGREEMENT WITH THE KENTUCKY)
INFRASTRUCTURE AUTHORITY)

APPLICATION OF BREATHITT COUNTY WATER)
DISTRICT FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO) CASE NO. 2011-00415
CONSTRUCT AND FINANCE PURSUANT TO KRS)
278.020)

APPLICATION OF BREATHITT COUNTY WATER)
DISTRICT FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO) CASE NO. 2011-00421
CONSTRUCT AND FINANCE PURSUANT TO KRS)
278.020)

ORDER

In separate applications, Breathitt County Water District ("Breathitt District") has applied for authorization to execute a loan agreement with the Kentucky Infrastructure Authority ("KIA") and for Certificates of Public Convenience for two water main extension projects. As Breathitt District intends to use the proceeds of the proposed loan to finance the proposed water main extension projects, the Commission has chosen to consolidate its findings regarding these applications into a single document.¹

Having reviewed these applications and being otherwise sufficiently advised, the Commission finds that:

¹ KIA has authorized a loan of \$2.5 million to Breathitt District to fund the construction of three water main extension projects. Breathitt District has applied to the Commission for Certificates of Public Convenience and Necessity for two of these projects. It has yet to apply for a Certificate for the third water extension project.

1. Breathitt District, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that distribute water to approximately 1,105 customers in Breathitt County, Kentucky.²

2. Breathitt District proposes a water main extension project known as "KY 1098 South Fork Waterline Extension." This project consists of two contracts. Contract 1 involves the construction and installation of approximately 16,750 linear feet of 8-inch polyvinylchloride ("PVC") water main; 22,000 linear feet of 6-inch PVC water main; 13,500 linear feet of 4-inch PVC water main; and 1,500 linear feet of 2-inch PVC water main along Kentucky Highway 1098. Contract 2 involves the construction of a 64,000-gallon water storage tank.³

3. The KY 1098 South Fork Waterline Extension will provide water service to approximately 123 households.⁴ The project has a customer density of approximately 12.05 customers per mile.

4. No water utility currently serves the area that the KY 1098 South Fork Waterline Extension is intended to serve.

5. Persons residing in the area that the KY 1098 South Fork Waterline Extension will serve currently rely upon wells, springs, or hauled water for their domestic

² *Report of Breathitt County Water District to the Public Service Commission for the Calendar Year Ended December 31, 2010* [hereinafter "2010 Annual Report"] at 5 and 27.

³ Nesbitt Engineering, Inc., "Breathitt County Water District: South Fork KY 1098 Waterline Extension – Final Engineering Report" (Dec. 2011) (filed Dec. 6, 2011), Attachments 3 and 4.

⁴ Nesbitt Engineering, Inc., "Breathitt County Water District: South Fork KY 1098 Waterline Extension – Preliminary Engineering Report" (Dec. 2011) (filed Dec. 6, 2011) at 2.

water needs.⁵ Well water in this area is extremely hard and contains noticeable amounts of iron.

6. Estimated total cost of the KY 1098 South Fork Waterline Extension is \$1,707,000.⁶

7. Breathitt District proposes to finance the cost of the KY 1098 South Fork Waterline Extension with \$800,000 from the proceeds of the proposed Drinking Water State Revolving Fund loan from KIA, \$566,000 of the proceeds of a Community Development Block Grant, \$334,000 of the proceeds of a Coal Severance Grant, and \$7,000 from customer tap fees.⁷

8. The Division of Water of the Kentucky Energy and Environment Cabinet (“DOW”) has approved the plans and specifications for the proposed KY 1098 South Fork Waterline Extension.⁸

9. The KY 1098 South Fork Waterline Extension will not result in the wasteful duplication of plant, equipment, property, or facilities, will not conflict with the existing service of other public utilities, and will not result in excessive investment.

10. Breathitt District also proposes a water main extension project known as the “Houston Road Waterline Extension.” This project involves the construction and installation of 25,000 linear feet of 4-inch PVC water main along Houston Road and

⁵ *Id.* at 2-3.

⁶ “Breathitt County Water District: South Fork KY 1098 Waterline Extension – Final Engineering Report,” Attachment 5.

⁷ *Id.*

⁸ Letter from Solitha Dharman, Water Infrastructure Branch, Kentucky Division of Water, to Bobby Thorpe, Jr., Chairman, Breathitt County Water District (Jan. 7, 2011).

Short Fork Houston Road; 2,750 linear feet of 2-inch PVC water main along Willis Drive; and a hydropneumatic pump station.⁹

11. The Houston Road Waterline Extension will provide water service to approximately 22 households. The project has a customer density of approximately 4.68 customers per mile.¹⁰

12. No water utility currently serves the area that the Houston Road Waterline Extension is intended to serve.

13. Persons residing in the area that the Houston Road Waterline Extension will serve currently rely upon wells, springs or hauled water for their domestic water needs.¹¹ Well water in this area is extremely hard and contains noticeable amounts of iron.

14. Estimated total cost of the Houston Road Waterline Extension is \$401,310.¹²

15. Breathitt District proposes to finance the Houston Road Waterline Extension with an appropriation of \$275,000 from the Kentucky General Assembly¹³ and

⁹ Nesbitt Engineering, Inc., "Breathitt County Water District: Houston Road Waterline Extension – Final Engineering Report" (Dec. 2011) (filed Dec. 6, 2011), Certified Bid Tabulation Sheet.

¹⁰ Nesbitt Engineering, Inc., "Breathitt County Water District: Houston Road Waterline Extension – Preliminary Engineering Report" (Oct. 2011) (filed Dec. 6, 2011) at 2.

¹¹ *Id.* at 2-3.

¹² "Breathitt County Water District: Houston Road Waterline Extension – Final Engineering Report," Certified Bid Tabulation Sheet.

¹³ 2010 Ky. Acts Extra. Sess. Ch. 1.

\$66,310 of the proceeds of the proposed Drinking Water State Revolving Fund loan from KIA.¹⁴

16. DOW has approved the plans and specifications for the proposed Houston Road Waterline Extension.¹⁵

17. The proposed Houston Road Waterline Extension will not result in the wasteful duplication of plant, equipment, property, or facilities, will not conflict with the existing service of other public utilities, and will not result in excessive investment.

18. The public convenience and necessity require the construction of the proposed projects.

19. Breathitt District proposes to execute a loan agreement with KIA to borrow an amount not to exceed \$2,500,000. The proposed loan agreement provides for principal forgiveness of 40 percent of the loan amount, with actual amortized loan and forgiveness amounts based on actual projects costs drawn from KIA. The loan will have an interest rate of one percent per annum and a repayment term of 20 years. Breathitt District will grant a security interest in its assets to KIA to secure the loan.¹⁶

¹⁴ Case No. 2011-00421, Application at 1 (received Oct. 24, 2011).

¹⁵ Letter from Harold Sparks, Water Infrastructure Branch, Kentucky Division of Water, to Bobby Thorpe, Jr., Chairman, Breathitt County Water District (June 29, 2011).

¹⁶ Letter from Kasi L. White, Financial Analyst, Kentucky Infrastructure Authority, to Bobby Thorpe, Jr., Chairman, Breathitt County Water District (Aug. 12, 2011).

20. Breathitt District proposes to use the proceeds of the KIA loan to fund the KY 1098 South Fork Waterline Extension, the Houston Road Waterline Extension, and the Canoe Road Water Line Extension.¹⁷

21. Based upon its proposed allocation of the proceeds of the KIA loan, Breathitt District intends to use approximately \$1,733,690 of the proceeds to construct the Canoe Road Water Line Extension.¹⁸

22. Breathitt District has yet to apply for or obtain a Certificate of Public Convenience and Necessity for the Canoe Road Waterline Extension.

23. The Commission has not determined whether construction of the Canoe Road Water Line Extension will result in the wasteful duplication of facilities or uneconomic investment and, therefore, cannot determine whether the use of any proceeds from the proposed loan agreement towards the cost of the Canoe Road Waterline Extension is necessary and appropriate for, and consistent with, Breathitt District's proper performance of its service to the public.

24. Assuming that the public convenience and necessity require the construction of the proposed Canoe Road Water Line Extension, the proposed loan agreement with KIA is for a lawful object consistent with Breathitt District's purposes, is

¹⁷ These projects are identified in the Kentucky Water Resource Information System as: KY 1098 South Fork Waterline Extension (WX21025015), the Houston Road Waterline Extension (WX21025020), and the Canoe Road Water Line Extension (WX21025021).

¹⁸ The Canoe Road Water Line Extension (WX21025021) involves the construction and installation of 38,682 linear feet of 8-inch PVC water main, 22,544 linear feet of 6-inch PVC water main, 18,452 feet of 4-inch water main, and 202 linear feet of 2-inch water main and the rehabilitation of two booster pump stations. It will extend water service in Breathitt County along Kentucky Highway 315, North of Kentucky Highway 1933 (Turners Creek) and the remaining side roads, including Canoe, Spicer Branch, Butter Point, Buzzard Fork, Stamper Fork, and Lick Branch Roads. Estimated total project cost is \$1,644,000. See <http://wris.ky.gov/Portal/DwPrjData.aspx?PNUM=WX21025021> (last visited Dec. 22, 2011).

necessary and appropriate for, and consistent with, Breathitt District's proper performance of its service to the public, will not impair Breathitt District's ability to perform service, and is reasonably necessary and appropriate for such purpose.

25. Prior to the issuance of a Certificate of Public Convenience and Necessity for the construction of the Canoe Road Water Line Extension, Breathitt District should restrict its use of the proceeds of the proposed KIA loan to the costs of the construction of the KY 1098 South Fork Waterline Extension and the Houston Road Waterline Extension.

IT IS THEREFORE ORDERED that:

1. Breathitt District is granted a Certificate of Public Convenience and Necessity to proceed with the KY 1098 South Fork Waterline Extension and the Houston Road Waterline Extension as set forth in its applications.

2. Breathitt District shall notify the Commission prior to performing any additional construction not expressly authorized by this Order.

3. Any deviation from the construction approved shall be undertaken only with the approval of the Commission.

4. Breathitt District shall furnish documentation of the total costs of this project including the cost of construction and all other capitalized costs (engineering, legal, administrative, etc.) within 60 days of the date that construction is substantially completed. Construction costs shall be classified into appropriate plant accounts in accordance with the Uniform System of Accounts for water utilities prescribed by the Commission.

5. Breathitt District shall file with the Commission a copy of the "as-built" drawings and a certified statement that the construction has been satisfactorily completed in accordance with the contract plans and specifications within 60 days of the substantial completion of each project certificated herein.

6. Breathitt District shall require each construction project to be inspected under the general supervision of a licensed professional engineer with a Kentucky registration in civil, electrical, or mechanical engineering to ensure that the construction work is done in accordance with the contract drawings and specifications and in conformance with the best practices of the construction trades involved in each project.

7. Breathitt District shall notify the Commission seven days prior to the actual start of each construction project and at the 50 percent completion point.

8. Breathitt District is authorized to enter into a loan agreement with the KIA for an amount not to exceed \$2,500,000.00 with a term of 20 years at an interest rate of one percent per annum.

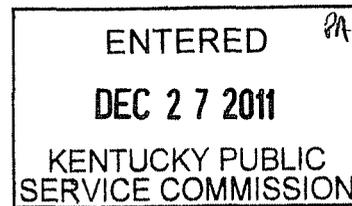
9. Within 30 days of executing its proposed loan agreement with KIA, Breathitt District shall advise the Commission in writing of execution of that agreement and of any terms in that loan agreement that differ from those described in Breathitt District's application.

10. Breathitt District shall use the proceeds from the proposed loan agreement with KIA only for the purposes set forth in its application; but shall not use any proceeds to pay any cost of the Canoe Road Water Line Extension until the Commission has issued a Certificate of Public Convenience and Necessity for that project.

11. The Executive Director shall cause a copy of this Order to be served upon KIA.

Nothing contained herein shall be deemed a warranty or guarantee of the Commonwealth of Kentucky, or any agency thereof, of the evidences of indebtedness authorized herein.

By the Commission



ATTEST:

Stephanie Bell for *JP Deane*
Executive Director

Case No. 2011-00399
Case No. 2011-00415
Case No. 2011-00421

Honorable Brendon D Miller
Attorney at Law
1149 Main Street
Jackson, KENTUCKY 41339

Bobby Thorpe, Jr.
Chairperson
Breathitt County Water District
1137 Main Street, Suite 305
Jackson, KY 41339